



# IDAHO

DEPARTMENT OF FINANCE

C.L. "BUTCH" OTTER  
Governor

GAVIN M. GEE  
Director

March 21, 2008



Re: [redacted]

Dear Mr. [redacted]:

This is in reference to the request of [redacted] and [redacted] that this Department take a no enforcement action position with regard to the investment advisory activities provided by Mr. [redacted] and Mr. [redacted] to [redacted].

We concur with your letter of March 7, 2008 that, given the sophistication of [redacted] members and the structure of [redacted], Mr. [redacted] and [redacted] should be excluded from the investment adviser registration requirements of the Idaho Uniform Securities Act (2004) (IUSA). Therefore, the Department agrees to take a no enforcement action position with regard to registration as to Mr. [redacted] and Mr. [redacted]'s investment advisory activities performed on behalf of [redacted] in Idaho. It should be noted that although we are willing to take a no enforcement action position in this matter, we consider Mr. [redacted] and Mr. [redacted] to be investment advisers as defined by Section 30-14-102(15) of the IUSA and subject to the various sales practice and anti-fraud provisions of the IUSA and the Investment adviser Act of 1940.

The Department's no enforcement action position is predicated upon the facts and representations contained within your letter of March 7, 2008. Should these facts and/or representations change or prove to be inaccurate, our no enforcement action position may also change.

If you have questions or comments regarding this matter, please contact Nancy C. Ax or me at 208-332-8004.

Sincerely,

Marilyn T. Chastain  
Securities Bureau Chief

SECURITIES BUREAU

Bureau Chief - Marilyn T. Chastain  
800 Park Blvd, Suite 200, Boise, ID 83712  
Mail To: P.O. Box 83720, Boise ID 83720-0031  
Phone: (208) 332-8004 Fax: (208) 332-8099  
<http://finance.idaho.gov>

March 7, 2008

Ms. Nancy C. Ax  
Securities Analyst  
Securities Bureau  
Idaho Department of Finance  
800 Park Blvd., Suite 200  
Boise, ID 83712

Re: [REDACTED]  
Request for No-Action Letter  
[REDACTED] File No. [REDACTED]

Dear Ms. Ax:

We are writing on behalf of [REDACTED] and [REDACTED] regarding [REDACTED], a Delaware limited liability company, formerly known as [REDACTED]. Messrs. [REDACTED] and [REDACTED] are the only two members of [REDACTED]'s Board of Managers as provided in section 6.1 of the Amended and Restated Operating Agreement dated February 2, 2007.<sup>1</sup> The purpose of this letter is to request a statement (i.e., "No-Action Letter") from the Idaho Department of Finance (the "Department") that it will not take enforcement action against either Mr. [REDACTED] or Mr. [REDACTED] for failure to register as an investment advisor under Idaho Code § 30-14-403 with respect to their client, [REDACTED].<sup>2</sup>

[REDACTED] was organized as a limited liability company by Mr. [REDACTED] on July 6, 2004 to continue implementation of his personal investment philosophy of investing alongside management on a very long-term basis in a limited number of companies with strong competitive positions and high returns on capital. At the time of its formation, Mr. [REDACTED] owned equity interests in five such companies, which he contributed to [REDACTED]. Mr. [REDACTED] was the sole member of [REDACTED]. Prior to forming [REDACTED], Mr. [REDACTED] had invested individually in companies meeting his criteria since 1990.

<sup>1</sup> I provided the Department with a copy of the Amended and Restated Operating Agreement on February 25, 2008. Please append a copy of the Amended and Restated Operating Agreement to this letter.

<sup>2</sup> It is our understanding that [REDACTED] is the client under the Investment Advisors Act of 1940 rather than the individual members of the limited liability company.

Before undertaking private investing for his own account as his primary activity, Mr. [ ] was a Managing Director and member of the Investment and Executive Committees of [ ], a private equity firm based in San Francisco.<sup>3</sup> Mr. [ ] began his work at [ ] in 1988 and was responsible for investments with a cost of approximately \$1.3 billion and a realized value in excess of \$4.5 billion. Prior to joining [ ], Mr. [ ] worked for [ ], a Boston venture capital firm, from 1984 to 1988 and for [ ] from 1980 to 1982. He has been a director of numerous private and public companies and currently serves as a director of [ ], [ ], [ ], several [ ] portfolio companies, and The [ ] in Sun Valley, ID.<sup>4</sup>

[ ] joined Mr. [ ] in his investment activities in early 2006. Mr. [ ] and Mr. [ ] changed the name of [ ] to [ ] and reorganized it as a Delaware limited liability company on April 12, 2006. Mr. [ ] serves with Mr. [ ] as a Managing Director. Prior to joining with Mr. [ ], Mr. [ ] was an equity research analyst in the New York and London offices of [ ] from 1995 through 2001. While at [ ], he covered major energy companies, and then IT Services companies, achieving a #1 ranking in the Reuters Portfolio Manager Survey and a #2 ranking in Institutional Investor. He started his career at [ ] in the firm's investment training program (1993-1995). On the industry side, Mr. [ ] has been the General Manager of [ ] (2002-2003) and Direct Sales Manager at [ ] (2002). He currently serves as a director of three of [ ]'s portfolio companies, [ ], [ ], and [ ]. Mr. [ ] received a BA in American Civilization from [ ] College in 1991.<sup>5</sup>

[ ]'s ideal transaction is the purchase of an entire business. [ ] does not operate any of the businesses in which it has invested. Rather, [ ] acts as capital partner to management. As is evident from the summary of [ ]'s portfolio companies, its investments span a range of industries including precision design software, cellular telephony, distribution logistics, self-storage, and natural gas exploration and production.<sup>6</sup> The value of [ ]'s holdings is a little over \$100 million at this time.

With regard to the other current members of [ ], [ ] is Mr. [ ]'s brother in law. He is a senior executive at [ ] based in San Francisco. [ ] is reportedly the largest hedge fund in the United States and it manages over \$35 billion of capital. Mr. [ ] is a very sophisticated investor. He owns about 20.24% of Greyhawk's member interests.

□

<sup>3</sup> See [ ] web site at [www.hf.com](http://www.hf.com).

<sup>4</sup> This information taken from [ ]'s web site, [www.\[ \].com](http://www.[ ].com). The purpose of this web site is not to provide information to the public or to solicit investors for [ ], but rather it is a convenient reference tool for companies being evaluated as candidates for investment by [ ].

<sup>5</sup> *Id.*

<sup>6</sup> See attached summary of portfolio companies.

[redacted] owns about 6.37% of [redacted]'s member interests. Mr. [redacted] began working with Mr. [redacted] at [redacted] in NYC in 1981. Mr. [redacted] and Mr. [redacted] were partners together at [redacted] in San Francisco for 15 years. They served as directors of [redacted] a Bermuda insurer. Currently, Mr. [redacted] manages his own investment firm, [redacted] in Palo Alto, California. Mr. [redacted] is also a very sophisticated investor.

[redacted], who owns about 5.63% of [redacted]'s member interests, is a former investment banker and is currently an entrepreneur working on solving traffic flow problems in mass transit. You can read about his work at [redacted]. Mr. [redacted] and Mr. [redacted] are good friends.

The following table recaps the member interests in [redacted] as of June 1, 2007:

[redacted]	Member Date	Capital Contribution	Percentage
	07-06-2004	\$58,383,366	65.77%
	04-12-2006	1,765,552	1.99%
	02-02-2007	17,969,300	20.24%
	06-01-2007	5,650,240	6.37%
	06-01-2007	5,000,000	5.63%
Totals		\$88,768,458	100.00%

The members of [redacted] can best be described as five very experienced and sophisticated friends who have acquired member interests in [redacted] to make investments in companies meeting Mr. [redacted]'s criteria.

Membership in [redacted] is not open to the public and no public solicitation for the sale of member interests in [redacted] is contemplated. [redacted] did make an offering of member interests to Messrs. [redacted], [redacted] and [redacted], in response to their respective requests to make an investment in [redacted]. A Form D, Notice of Sale of Securities pursuant to Regulation D was received by the Department on June 18, 2007. It is possible that other accredited investors may acquire member interests in [redacted] in the future.

We understand that the Department has taken the position that Messrs. [redacted] and [redacted] are investment advisors as defined in Idaho Code § 30-14-102(15) because, *inter alia*, they receive compensation based upon securities purchases and sales. While we may not agree that the profits sharing arrangement described in the Amended and Restated Operating Agreement constitutes compensation for purposes of Idaho Code § 14-30-102(15), we understand the Department's position. Regardless, neither Mr. [redacted] nor Mr. [redacted] provides investment advice or receives compensation based upon securities purchases and sales from any person other than [redacted].

[redacted] owns about 6.37% of [redacted]'s member interests. Mr. [redacted] began working with Mr. [redacted] at [redacted] in NYC in 1981. Mr. [redacted] and Mr. [redacted] were partners together at [redacted] in San Francisco for 15 years. They served as directors of [redacted] a Bermuda insurer. Currently, Mr. [redacted] manages his own investment firm, [redacted] in Palo Alto, California. Mr. [redacted] is also a very sophisticated investor.

[redacted], who owns about 5.63% of [redacted]'s member interests, is a former investment banker and is currently an entrepreneur working on solving traffic flow problems in mass transit. You can read about his work at [redacted]. Mr. [redacted] and Mr. [redacted] are good friends.

The following table recaps the member interests in [redacted] as of February 2, 2007:

	Member Date	Capital Contribution	Percentage
[redacted]	07-06-2004	\$58,383,366	65.77%
	04-12-2006	1,765,552	1.99%
	02-02-2007	17,969,300	20.24%
	06-01-2007	5,650,240	6.37%
	06-01-2007	5,000,000	5.63%
Totals		\$88,768,458	100.00%

The members of [redacted] can best be described as five very experienced and sophisticated friends who have acquired member interests in [redacted] to make investments in companies meeting Mr. [redacted]'s criteria.

Membership in [redacted] is not open to the public and no public solicitation for the sale of member interests in [redacted] is contemplated. [redacted] did make an offering of member interests to Messrs. [redacted], [redacted] and [redacted], in response to their respective requests to make an investment in [redacted]. A Form D, Notice of Sale of Securities pursuant to Regulation D was received by the Department on June 18, 2007. It is possible that other accredited investors may acquire member interests in [redacted] in the future.

We understand that the Department has taken the position that Messrs. [redacted] and [redacted] are investment advisors as defined in Idaho Code § 30-14-102(15) because, *inter alia*, they receive compensation based upon securities purchases and sales. While we may not agree that the profits sharing arrangement described in the Amended and Restated Operating Agreement constitutes compensation for purposes of Idaho Code § 14-30-102(15), we understand the Department's position. Regardless, neither Mr. [redacted] nor Mr. [redacted] provides investment advice or receives compensation based upon securities purchases and sales from any person other than [redacted].

We also understand from my conversations with you that Messrs. [ ] and [ ] as well as [ ] are subject to the various sales practice and anti-fraud provisions of the Uniform Securities Act (2004) as adopted in Idaho.

Mr. [ ] and Mr. [ ] do not presently intend to register as investment advisors under the Investment Advisors Act of 1940 because: (1) their only client, [ ], and Messrs. [ ] and [ ] all maintain their principal office and place of business in Idaho, and neither Mr. [ ] nor Mr. [ ] furnishes advice or issues analyses or reports with respect to securities listed or admitted to unlisted trading privileges on any national securities exchange; and (2) during the course of the preceding twelve months Messrs. [ ] and [ ] had only one client, [ ], and neither Mr. [ ] nor Mr. [ ] holds himself out generally to the public as an investment adviser.<sup>7</sup>



Neither the Uniform Securities Act (2004) nor section 12.01.08 of the Rules Pursuant to the Uniform Securities Act (2004) (Administrative Procedure Act) contains exemptions from registration similar to Section 203(b) of the Investment Advisors Act of 1940. However, Idaho Code § 30-14-102(15)(g) states that the term "investment advisor" does not include "Any other person excluded by a rule adopted or an order issued under this chapter." Section 12.01.08.100 of the Idaho Administrative Procedure Act states: "The Administrator may, either upon request or upon his own motion, waive or modify the application of any particular section to a particular . . . investment adviser when, in his opinion, just and reasonable cause exists for such action and the waiving or modifying of such rule would not be contrary to the provisions of the Act or to the public interest." Further, section 12.01.08.003 provides: "The Administrator, in his discretion, may honor requests from interested persons for formal interpretive opinions and no-action positions. . . ."

We submit that good cause exists in this case to exempt Messrs. [ ] and [ ] from registration as investment advisors under the Uniform Securities Act (2004). [ ] is a well-managed and sophisticated investment vehicle. The exemption from securities registration under Regulation D, coupled with the investment criteria employed by the Board of Managers, provides for a very limited access to member interests by sophisticated accredited investors. From a regulatory standpoint, there is very little to be gained in investor protection from requiring registration as investment advisors that will not be accomplished and safeguarded pursuant to the disclosure requirements already imposed by the Uniform Securities Act (2004) and Regulation D.

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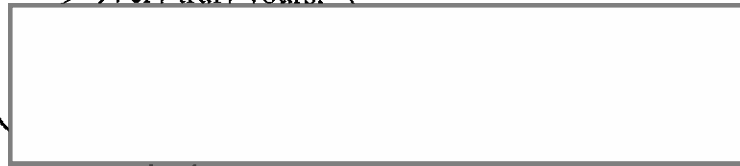
<sup>7</sup> See 15 U.S.C. § 80b-3(1) and (3); Investors Advisors Act of 1940 § 203(b)(1) and (3).



Considering the foregoing, we request the Department's assurance that it will not take enforcement action against either Mr.  or Mr.  for failure to register as an investment advisor under Idaho Code § 30-14-403 with respect to the services rendered to Greyhawk by them.

Thank you for your consideration of this request for a No-Action Letter.

Very truly yours.



Enclosures

cc: , w/o encls. (Via email)